

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA

v.

EDWARD JOHNSON

Case No. 3:02-CR-116 JD

OPINION AND ORDER

On January 19, 2005, Defendant Edward Johnson was sentenced to a total term of 40 years imprisonment on his two convictions for aggravated bank robbery which resulted in death. (DE 757.) Johnson then filed a motion for compassionate release. (DE 1020.) This Court issued an order denying Johnson's motion for compassionate release on April 11, 2022. (DE 1036.) Johnson then filed a notice of appeal, which was dismissed by the Seventh Circuit as untimely. (DE 1043; DE 1049-1.) Johnson has now requested leave to file an "out-of-time" notice of appeal. (DE 1050.)

The Court denies this motion. Under Federal Rule of Appellate Procedure 4(b), a defendant must file a notice of appeal in the district court within 14 days after the later of the entry of judgment, the order being appealed, or the filing of the government's notice of appeal. This Court issued its order denying Johnson's motion for compassionate release on April 11, 2022, making his last day to file an appeal April 25, 2022. (DE 1036.) However, Johnson filed his notice of appeal nearly four months late, on August 19, 2022 (DE 1043), which prompted the Seventh Circuit to dismiss his appeal for being untimely. (DE 1049-1.) While Johnson now requests an extension of time to file a notice of appeal, this Court lacks the authority to do so. Under Federal Rule of Appellate Procedure 4(b)(4), this Court has authority to, "upon a finding of excusable neglect or good cause[,] extend the time to file a notice of appeal for a period *not to*

exceed 30 days from the expiration of the time otherwise prescribed" by Rule 4(b). Here, 30 days after the expiration of the time to file an appeal was May 25, 2022. The Court lacks authority to grant an extension given that more than 30 days since April 25, 2022 (i.e., May 25, 2022) have now passed. *See, e.g., United States v. Cosey*, 2010 WL 502701, at * 1 (C.D. Ill. 2010) (finding the defendant's motion for extension of time to file a late notice of appeal was "time-barred under Rule 4(b)(4) because considerably more than 30 days" had expired); *United States v. Nasierowski*, 2006 WL 463592, at *2 (E.D. Wis. 2006) (extension of time cannot exceed 30 days).

Accordingly, the Court DENIES Johnson's motion. (DE 1050.)

SO ORDERED.

ENTERED: April 10, 2023

/s/ JON E. DEGUILIO

Chief Judge
United States District Court